U.S. DISTRICT COURT
N.D. OF N.Y.
FILED

FEB 24 2017

LAWRENCE K. BAERMAN, CLERK
ALBANY

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

MOHAMED A. HAFEZ,

PLAINTIFF,

CIVIL RIGHTS COMPLAINT

-Against-

JURY TRIAL DEMANDED

1:17-cv-219
(GTS/TWD)

CITY OF SCHENECTADY,
GARY R. MCCARTHY,
DOMENIC VISCARIELLO,

DEFENDANTS.

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JURISDICTION

1. Jurisdiction is proper in this court according to 42 U.S.C. § 1983; 28 U.S.C. §§ 1331 and 1343.

2. Plaintiff, *pro se*, Mohamed A. Hafez, my present mailing address is 2101 Chrisler Ave, Schenectady, New York 12303. I reside in the City of Schenectady and I own several residential rental properties in Schenectady.

3. Defendant Gary R. McCarthy is the Mayor of the City of Schenectady. Mayor McCarthy approves the City of Schenectady policies and practices. He also votes on and signs ordinances into law. Defendant Dominic Viscariello is the City of Schenectady code enforcement supervisor in charge of enforcing the rental property ordinance and rental unit inspections.

4. The defendants were acting under color of state law. The defendants' mailing address is City Hall, 105 Jay Street, Schenectady, New York 12305. The individual defendants are being sued in their personal capacities.

NATURE OF THE CASE

The Rental Property Ordinance Registration Provision Is Facially Unconstitutional And As Applied

5. The City of Schenectady Code § 210-5 (A)(1) of the Rental Property Ordinance (hereinafter the "Ordinance") requires landlords to complete and submit landlord registration statements that include, among other things, the tenants' names who will occupy the rental units, the rental lease information, and a copy of the property owner's insurance information and declaration page. The full text of the Ordinance can be accessed electronically under Chapter 210 with this internet link http://www.ecode360.com/SC0901.

6. Section 210-5 (A)(2) of the Ordinance requires that, as a landlord, I must submit additional proprietary information including the property owner's name, residential address, mailing address, business telephone number, home telephone number and fax number. If the owner is a corporation, the name, residence, address, business telephone numbers, fax numbers of at least two officers or principals responsible for the management of the premises.

7. The Ordinance provision that requires the inspection of my proprietary business records is an invasion of my privacy interests in those records and is being coercively enforced by the defendants with the threat of criminal prosecution and without an opportunity for a pre-compliance judicial review of the reasonableness of the demands, and is therefore facially unconstitutional as it violates my Fourth Amendment rights to privacy, and to be secure in my person, papers, effects, against unreasonable searches and seizures.

8. Despite my desire not to provide the protected information, I was compelled to supply the requested information because failure to provide this information will subject landlords to criminal and civil penalties per § 210-18 (A)(1), and the Ordinance considers it unlawful for the property owner to rent any unit without first registering and providing the demanded information per § 210-4 (B).

The Ordinance Inspection Provision Is Unconstitutional As Applied

9. Section 210-8 (A)(2) of the Ordinance requires landlords to submit an application for inspection whenever a vacancy exists in any of the rental units. When a consent to inspect the unit is *not* granted by the owner, the building inspector is required to apply for a warrant in order to inspect the property. Section 210-6 considers it unlawful to rent any unit unless such unit has a valid rental certificate.

10. As required by the Ordinance, I submitted applications for rental certificates for my properties on the dates listed in the table below and I paid the inspection fees, but I did not consent to the warrantless inspections of my properties. I never received rental certificates for any of my listed rental units with the named tenants, as the defendants have failed to obtain any warrants or consent of the tenants to inspect my rental units.

Application Date	Property Address	Unit No.	Paid Fees	Property Type	Property Class Code
6-May-15	26 Selden Street	2 & 3	$200	Res 1	230
11-Jun-15	1151 Crane Street	2,3,5,6	$200	Com 1	482
15-Sep-15	1151 Crane Street	1,4,7	$150	Com 1	482
10-Dec-15	1521 Van Vranken Ave	2	$100	Com 1	411
10-Dec-15	1671 Broadway	3	$50	Com 1	411
17-Jun-16	1594 Union Street	1	$50	Res 1	220
17-Jun-16	1521 Van Vranken Ave	2,3,4	$150	Com 1	411
19-Aug-16	1671 Broadway	4	$50	Com 1	411
30-Nov-16	1671 Broadway	2	$50	Com 1	411
30-Nov-16	1594 Union Street	1	$50	Res 1	220
30-Jan-17	1671 Broadway	4	$50	Com 1	411
30-Jan-17	1521 Van Vranken Ave	3	$50	Com 1	411

11. I applied for rental certificates on the above listed dates as required by § 210-8 (A)(3) of the Ordinance, but in retaliation for my refusal to consent to warrantless inspections of my properties, the defendants have denied granting me rental certificates, never conducted inspections of my rental units within, or anytime after the five working day period required by the Ordinance, all in violation of my Fourth Amendment rights to refuse consent to warrantless inspections.

12. The defendants have continuously denied granting me rental certificates for my units in retaliation for exercising my First Amendment rights to free speech against warrantless inspections of my properties, all in violation of my free speech rights and my right to be free from retaliation, as guaranteed by the First Amendment of the United States Constitution.

13. The defendants' continuous failure to grant me rental certificates for my rental units is in retaliation for my filing of a prior lawsuit in Federal court against the same city defendant and defendant Viscariello against their code enforcement practices, and is in violation of my First Amendment free speech rights to petition for redress and to be free of retaliation, as guaranteed by the United States Constitution.

14. The defendants' retaliatory disparate acts and conduct, their unequal treatment and their continuous failure to grant me rental certificates for my rental units, and their continuous granting of rental certificates to similarly situated landlords that own rental properties of the same type and class code, that have registered, applied for rental certificates and paid the same inspection fees that I paid and have consented to warrantless inspections of their properties, are in violations of the Fourteenth Amendment Equal Protection Clause.

15. The Ordinance provides no clear enforcement procedures to follow in granting rental certificates when consent to inspect is not granted and a warrant is not issued, and thus encourages arbitrary and discriminatory enforcement, and therefore is void for vagueness under the Fourteenth Amendment's Due Process Clause.

16. In further retaliation for my refusal to consent to warrantless inspections, in February 2016, the defendants have initiated a criminal court proceeding for not having a rental certificate for one of my rental units. I was compelled to appear in court and hire an attorney to defend me in the court proceeding that eventually turned in my favor.

17. As applied, the Ordinance is clearly not rationally related to the city government declared interests of protecting the health and safety of tenants or in eliminating slums and blight, as the defendants have regularly collected inspection fees and penalties, and have *not* inspected any of my rental units at anytime after I applied for the rental certificates and paid the required fees on the dates listed in the above ¶10 table.

18. The aforementioned retaliatory acts and unconstitutional conduct by the defendants acting with retaliatory animus, under the color of state law, and their failure to train and supervise their employees have caused me irreparable harm and were designed to inhibit and deprive me of my constitutional rights, and may chill other landlords from exercising their protected constitutional rights, as guaranteed by the First, Fourth and Fourteenth Amendments to the United States Constitution.

FIRST CAUSE OF ACTION

19. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1 through 18 of this Complaint with the same force and effect as if set forth herein.

20. Defendants have violated, chilled and inhibited my First Amendment rights my free speech rights, my rights not to speak, to petition for redress and to be free of retaliation, and may chill future actions by other landlords who might want to enforce their First Amendment rights, all in violation of 42 U.S.C. § 1983 and the United State Constitution, as amended.

SECOND CAUSE OF ACTION

21. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1 through 20 of this Complaint with the same force and effect as if set forth herein.

22. Defendants have violated my Fourth Amendment rights to privacy, and my right to refuse consent to warrantless inspections of my properties, and to be free from unreasonable searches and to be secure in my person, houses, papers, and effects, against unreasonable searches and seizures of my business records, and may chill future actions by other landlords who might want to enforce their Fourth amendment rights, all in violation of 42 U.S.C. § 1983, and the United States Constitution.

THIRD CAUSE OF ACTION

23. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1 through 22 of this Complaint with the same force and effect as if set forth herein.

24. Defendants' retaliatory disparate acts and conduct against me violate my Equal Protection rights to be treated equally and be granted rental certificates for my rental units like similarly situated landlords who were granted rental certificates for their rental units, and there is no rational basis for the difference in the unequal treatment, as guaranteed by the Fourteenth Amendment to the United States Constitution, and 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION

25. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1 through 24 of this Complaint with the same force and effect as if set forth herein.

26. The Ordinance is unconstitutionally vague as it provides for no clear procedures to follow to grant rental certificates when consent to inspect is not granted and a warrant is not obtained, and it encourages arbitrary and discriminatory enforcement, all in

violation of my substantive due process rights guaranteed by the Fourteenth Amendment to the United States Constitution.

FIFTH CAUSE OF ACTION

27. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1 through 26 of this Complaint with the same force and effect as if set forth herein.

28. Defendants' acts and conduct are actionable under the laws of the State of New York for unjust enrichment because the defendants have collected and inequitably retained inspection fees by virtue of the Ordinance without performing any inspections of my rental units as required by § 210-8 A(3) of the Ordinance.

SIXTH CAUSE OF ACTION

29. Plaintiff repeats and alleges each and every allegation contained in paragraphs 1 through 28 of this Complaint with the same force and effect as if set forth herein.

30. Defendants' retaliatory acts and harassing conduct have caused me great pain, mental anguish and constitute a cause of action for intentional infliction of emotional distress, actionable under 42 U.S.C. § 1983.

PRAYER FOR RELIEF

WHEREFORE, the plaintiff seeks preliminary and permanent injunctions and respectfully requests that this Court enter judgments:

(a) Enjoining and permanently restraining the defendants from retaliating against, or harassing the plaintiff on any basis forbidden by U.S.C. 42 § 1983;

(b) Declaring that the Ordinance provision requiring landlords to provide lists of tenants, lease details, landlord's insurance and other private information to the defendants with no opportunity for pre-compliance judicial review, is facially unconstitutional;

(c) Declaring that the Ordinance, as applied, is *not* rationally related to the legitimate city government interests of protecting the health and safety of tenants and eliminating slumps and blight, as the defendants have regularly collected inspection fees, have not performed the required inspections of my rental units within the time period required by the Ordinance provisions, and issued no rental certificates for my rental units;

(d) Declaring that the Ordinance provision pertaining to the inspection of rental properties is unconstitutional and the Ordinance is void-for-vagueness, as it provides for no clear procedures to follow in granting a rental certificate when consent to inspect is not granted and a warrant is not obtained, and it encourages arbitrary and discriminatory enforcement, all in violation of my legal rights and protections guaranteed by the Fourteenth Amendment's Due Process and Equal Protection clauses;

(r) Preliminarily and permanently enjoining the City and its respective officers, agents, employees, and attorneys, and those persons in concert or participation with them, from taking any actions to enforce the registration and inspection provisions of the Ordinance;

(f) Directing the defendants to compensate, reimburse the plaintiff for all the fees and penalties illegally collected;

(g) Awarding the plaintiff litigation expenses, costs and legal fees;

(h) Awarding the plaintiff compensatory damages;

(i) Awarding the plaintiff damages for the increase in business costs to the plaintiff;

(j) Awarding the plaintiff punitive damages against the individual defendants;

(k) Granting such other and further relief this Court deem just, proper and equitable.

PLAINTIFF DEMANDS A JURY TRIAL ON ALL ISSUES OF FACTS

I, Mohamed A. Hafez, hereby affirm under the penalty of perjury that the foregoing is true and correct to the best of my information, knowledge and belief.

Executed on February 24, 2017

Mohamed A. Hafez,
Plaintiff, *pro se*
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